

## REMARKS

Applicant has cancelled claims 1-25, and replaced them with new claims 26-31. New claims 26-31 are based upon original independent claims 15 and 19 and dependent claims therefrom. Support for the new claims is found in the original claims, and Figures 1 through 4.

### 35 U.S.C. § 112, para. 2 Rejections

New claims 26-31 are submitted to more clearly distinguish the presently claimed invention from the prior art references cited by the Examiner in the office Action of February 6, 2004. In light of these amendments, Applicant respectfully submits that the currently pending claims are free of the 35 U.S.C. §112 paragraph 2 rejections and are definite. Reconsideration and withdrawal of the §112 indefiniteness rejections is therefore requested.

### 35 U.S.C. §§ 102(a) and 103(a) Rejections

New independent claims 26 and 30 require a metering member, (reference number 4 in Figure 1) that includes a dispensing member 10 and sleeve 9 (see Figure 1), which together provide at least one measuring chamber for transferring medicament from the medicament reservoir to a dispensing cup, and require that the dispensing cup is provided with an air duct. The air duct permits correct inhalation of the medicament from the dispensing cup during use.

As explained on p. 6, lines 1-9 of the application, providing a metering member which at a first stage permits the transfer of a measured dose in a sealed fashion to a dispensing cup which includes an air duct has a number of advantages. Previously, the use of an air inlet or duct was felt to be undesirable since it was thought to affect the accuracy of the measurement of the medicament dose. Surprisingly, however, by using a system wherein the medicament is first transferred to the measuring chamber and then subsequently to the dispensing cup, the cup in the dispensing member may be provided with an air inlet without any loss in accuracy of the dosage delivered.

Dmitrovic et al (US 6,321,747) has no air duct provided in a dispensing cup. As can be seen in Figures 1 and 2 of the '747 patent, medicament is transferred into the metering recess (element 22, analogous to the dispensing cup in the present application) and there is no provision of an air duct for this recess. In addition, the '747 patent makes

no disclosure of a measuring chamber which transfers medicament from the main reservoir to the recess.

An additional embodiment in the '747, shown in Figures 6 and 7 and described in columns 4 and 5-6, a recess (element 65) is provided, but again, there is no disclosure of a dispensing cup with an air duct or of a measuring chamber for transferring medicament from the main reservoir to that dispensing cup. Rather, as noted in column 6, lines 5-9, as a user inhales through mouthpiece 57, air is drawn in through a grill 80 and various passages formed in the delivery device. Therefore, Applicant respectfully submits that the claims, as currently amended, are not anticipated by Dimitrovic et al.

Reconsideration and withdrawal of the anticipation rejection under 35 U.S.C. § 102 (a) is therefore requested.

Given that Dmitrovic et al. does not disclose an air duct in the dispensing cup, the advantage of first transferring the medicament to the measuring chamber and then subsequently to the dispensing cup - all the while providing an accurately delivered dosage of the medicament - is not available to delivery systems of the type disclosed in Dmitrovic et al. Further, Dmitrovic et al. does not suggest modifying the disclosed delivery device/system to provide an air duct with the dispensing cup, nor is such a suggestion available in the knowledge generally available in the field since it was believed such a modification would not provide delivery of accurate dosages of the intended medicament. Therefore, Applicant respectfully submits that the currently pending claims 26-31 are not obvious in light of Dmitrovic et al, alone or in combination with Braithwaite and/or Newhouse. Reconsideration and withdrawal of the 102(2) anticipation rejections, and 103(a) obviousness rejections is therefore requested.

#### Submission of a Supplemental IDS

In addition, please note that an additional reference, EP 549605 B1 has been cited by the Australian Patent Office, and is being submitted herewith as a Supplemental Information Disclosure Statement, for consideration by the Examiner. EP 549605 B1 is written in German, but contains an English translation of the claims. US patent 5,617,845 is the equivalent English language patent, and US 5,347,999 is a related

application; both are provided for review and consideration as part of a Supplemental IDS submitted Herewith.

US Patent No. 5,347,999 discloses a first embodiment in which a brush is used to scrape medicament from a solid tablet (4) prior to inhalation through mouthpiece 16. As such, this is a very different type of inhalation device or delivery device from that claimed in the present application. Again, there is no medicament reservoir disclosed in the '999 patent because the medicament is a solid-based medicament in tablet form and the medicament delivery system and device in the '999 patent is particular for that type of solid-based medicament. It should also be noted that there is no dispensing cup provided with an air duct to which medicament is transferred from the reservoir via a measuring chamber. Rather, in this embodiment, the scraped powder is drawn outward through the body of the inhalation device through mouthpiece 16.

US Patent No. 5,617,845, the US equivalent to EP 549605 B1, illustrates an embodiment which does use a medicament reservoir. However, in this embodiment, a chamber (element 7 in Figure 1) is filled with the medicament from the reservoir and is then lowered into the inhalation passage 9 where, when inhalation is to take place, an air jet blows the medicament from the passage 7. This is described in column 5, lines 36-46. As such, medicament is inhaled from the very measuring chamber 7 from which medicament is transferred from the reservoir. There is no disclosure of an initial measuring chamber transferring medicament from the reservoir to a further dispensing cup which includes an air duct. Chamber 7 in the '845 patent suffers from the very problem the present invention seeks to overcome - that of providing an accurate dose to a user.

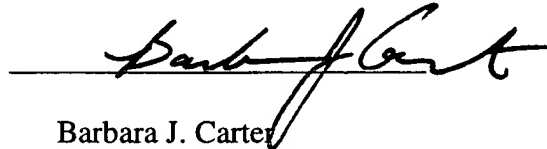
## CONCLUSION

It is believed that all pending claims are in condition for allowance and so reconsideration of the claims and a notice of allowance are therefore requested.

Applicant hereby petitions for a two-month extension of time and submits a check in the amount of \$420 to cover the cost of the extension fee, and the fee for submission of a supplemental IDS. However, in the event that an additional extension of time is required, Applicant requests that any such fees be charged to deposit account number 19-4972, as well as any additional fees that may be required for the timely consideration of this application. The Examiner is requested to telephone the undersigned if any matters remain outstanding so that they may be resolved expeditiously.

Date: July 6, 2004

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Barbara J. Carter", is written over a horizontal line.

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